

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 50 of 1990

Hon'ble MR.JUSTICE M.R.CALLA
and
MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 : NO

SHAMALBHAI P VANKER

Versus

STATE OF GUJARAT

Appearance:

MR ASIM PANDYA for Petitioners
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT
Date of decision: 10/03/98

ORAL JUDGEMENT

This is an appeal preferred against the conviction recorded by the learned Sessions Judge, Sabarkantha in Sessions Case No. 52 of 1989 on 6th January, 1990. The Appellant No. 1 has been convicted under Section 302 of the Indian Penal Code and the Appellants Nos. 2 and 3 are convicted under Sections 302, 34 and 114 of the IPC. All the three appellants-accused have been sentenced to life

imprisonment. We are informed that pending this appeal, Appellant No. 2 has died.

On 25th May, 1989 the accused-appellants, deceased Manibhai, complainant-Amrutbhai and some others were travelling in a Matador while returning from a marriage ceremony solemnized at village Vaghpur. The marriage party was returning from village Vaghpur to Talod in Prantij Taluka. While return journey, members of the marriage party were playing some game which resulted into a quarrel between the accuseds and the deceased Manibhai. The party reached Talod at around 8.00 O'clock in the evening. The members of the party alighted from Matador and dispersed. However, the squabble between the deceased and the accuseds continued. The accuseds after a short-while left the place and returned to their home. Before the deceased left the place, the accuseds returned back with sticks and a knife. The accused No. 1 stabbed the deceased with the knife. The deceased fell down and succumbed to the injuries on the spot. The complaint was lodged by one Amrutbhai Mohanbhai, the brother of the deceased Manibhai.

The accusation of stabbing by Shamalbhai has been supported by the Post-mortem Note {Exh. 30}. It is proved that the deceased Manibhai died of two knife blows on his abdomen and he was also injured by a third knife blow on his left arm. The weapon viz., the knife was recovered from the house of accused no. 1 and it was accused no. 1 who recovered it in presence of panchas and police {Exh. 20}. However, the statement of complainant that the accused nos. 2 and 3 gave stick blows to the deceased has not been supported in evidence before the Court nor it is supported by the Post mortem Note. On the contrary, he has deposed before the Court that neither of the respondent Nos. 2 and 3 gave stick blow to deceased Manibhai or any other person. The eye witnesses Amrutbhai Mohanbhai prosecution witness No. 8 (Exh. 23), Mangabhai Jivanbhai prosecution witness No. 3, Ambalal Lalabhai prosecution witness No. 4 {Exh. 16} and Hiraben Manibhai - Prosecution witness no. 5 (Exh. 17) have deposed that the accuseds nos. 2 and 3 caught hold of the deceased by holding his shoulders while the accused no. 1 stabbed knife in the abdomen of the deceased. Further, all of them deposed that none of them came forward to rescue deceased Manibhai nor did any one try to restrain the accuseds nos. 2 and 3 from holding the deceased Manibhai.

The learned counsel Mr. Asim Pandya has appeared

for the appellants and has submitted that he does not press appeal against the conviction of the appellant no. 1. However, he has submitted that appellant no. 1 has been wrongly convicted under Section 302 of the Indian Penal Code. He has submitted that it is apparent that the incident in question happened suddenly while the accused, deceased and some other persons were returning back from a marriage ceremony. Mr. Pandya has, therefore, submitted that in view of exception 4 to Section 300 of the Indian Penal Code, the appellant no. 1 cannot be said to have committed murder as defined in Section 300 of the Indian Penal Code. The appellant No. 1, therefore, could not have been convicted under Section 302 of the Penal Code. He has submitted that the appellant no. 1, therefore, could have been convicted for committing culpable homicide not amounting to murder. He has also submitted that the prosecution has failed to establish intention to cause death or to cause such bodily injury which was likely to cause death. The appellant no. 1, therefore, could not have been sentenced to suffer imprisonment for more than 10 years. Further, he has submitted that the appellant no. 1 can hardly be said to be a literate person. He has studied upto Standard IV only and at the time of incident, he was just 24 years old and he has been in jail since 26th May, 1989. The learned APP Mr. Desai has not been able to meet the argument of Mr. Pandya. On perusal of the evidence of the eye-witnesses; including the complainant, it does appear that the incident in question occurred on account of sudden fight between the deceased and the accuseds, the prosecution has also failed to establish intention of causing death or of causing such bodily injury as is likely to cause death. Further, it would be natural for the eye-witnesses to rush to rescue the deceased and to set him free from the hold of accused nos. 2 and 3. However, none of the eye-witnesses, though two of them were the brother and wife of the deceased, took any action either to rescue the deceased or to set him free from the hold of the accused nos. 2 and 3. We are, therefore, of the opinion that the statements of eye-witnesses made in respect of accused nos. 2 and 3 holding the deceased by his shoulders is not believable. The accused nos. 2 & 3, therefore, could not have been convicted for abatement of the offence as has been done in the present case.

In view of the above discussion, we hold that the learned Sessions Judge has erred in convicting the appellant no. 1 for committing murder of the deceased. The conviction of the appellant no. 1 is, therefore, altered to one for committing culpable homicide not

amounting to murder. The conviction of the appellant nos. 2 and 3 cannot be sustained and is hereby quashed and set-aside.

In view of the above discussion, this appeal is partly allowed. The conviction of Appellant No. 1 Shamalbhai Punjabhai Vanker is altered to one under Section 304 Part-II of the Indian Penal Code. Having regard to age and education of the Appellant No. 1 and the fact that he has been in jail since 26th May, 1989, the sentence is reduced to the sentence already undergone. The Appellant No. 1 be set at liberty forthwith, unless required in any other case. The conviction recorded and sentence awarded to the Appellants Nos. 2 & 3 is set-aside. The Appellant Nos. 2 & 3 are acquitted of the offences under Sections 302, 34 and 114 of IPC. Appellant No. 2 has already expired. Appellant No. 3 Girdharbhai Haribhai Vanker be set at liberty forthwith unless required in any other case.

Prakash*